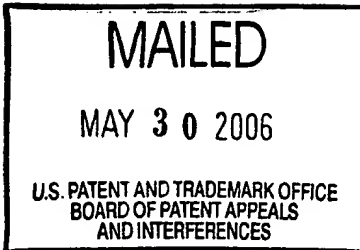


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AMY HAUGEN and KEVIN ROWNEY

Application 09/637,387

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on May 17, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

An examination of the Image File Wrapper (IFW) reveals that appellants filed a Notice of Appeal on June 28, 2004 "rejecting the following claims: 3-15, and 30." The "Grounds of Rejection to be Reviewed on Appeal" section located on page 7 of the Appeal Brief filed November 14, 2005 states that "claims 3-15 and 30 are unpatentable under 35 U.S.C. § 102(b) as being anticipated by Biorge." However, page 3 of the Examiner's Answer mailed January 30, 2006 states that "[c]laims 3-15 are rejected under 35 U.S.C.102(b) as being anticipated by Biorge et al. (hereinafter Biorge), US Patent

5,806,045A ["Grounds of Rejection]. Clarification is required regarding the status of claim 30.

In addition, § 1207.02 of the Manual of Patent Examining Procedure (MPEP) (8th Ed., Rev. 3, August 2005) states:

Requirements for Examiner's Answer

The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

....

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

It is noted that while the Examiner's Answer states that "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal" [pages 2 and 3 under the caption "Evidence Relied Upon"], the claim rejections are listed as follows:

1. Claims 3-15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Biorge et al. (hereinafter Biorge), US Patent 5,806,045A [page 3].

Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

1) for clarification regarding the status of claim 30;

2) for submission of a revised Examiner's Answer which corrects the "Evidence Relied Upon" section and, if appropriate, the "Grounds of Rejection"; and

3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

DALE M. SHAW
Deputy Chief Appeal Administrator
(571) 272-9797

DMS:psb

Rothwell, Figg, Ernst & Manbeck, P.C.
1425 K Street, N.W
Suite 800
Washington, D.C. 20005